October 4, 1983

269(a)

STATEMENT OF SENATOR WALTER D. HUDDLESTON (D.-Ky.)

CONCERNING

S.1324 -- THE INTELLIGENCE INFORMATION ACT of 1983

Today the Senate Select Committee on Intelligence is considering S.1324, the Intelligence Information Act of 1983, with amendments designed to ensure that the bill strikes the right balance between the public's need for information about their government and the CIA's desire for relief from burdens imposed by the current requirements to search and review sensitive operational files under the Freedom of Information Act. I support the amended bill as a practical way to achieve both of these objectives.

There are four significant changes from the bill as introduced. First, the standards for designation of operational files by the Director are spelled out in order to indicate exactly which file systems in the CIA will be exempted from search and review. This amendment results from a careful examination by the Select Committee of CIA record-keeping practices. Our objective is to ensure that the bill applies only to the most sensitive operational files, and not the the files that are used to store the intelligence reports used by analysts and policymakers. The amendment also makes clear that files of other CIA components, such as the Office of the Director, cannot be exempted from search and review even though they contain the operational documents which receive the attention of the Director or Deputy Director. This ensures continued access to all significant policy materials.

The second change in the bill provides that the designation of any operational file shall not prevent the search and review of such file for information reviewed and relied upon in an official investigation for impropriety or illegality in the conduct of an intelligence activity. This applies to any matter that has been investigated by the House or Senate Intelligence Committee, the Intelligence Oversight Board, the CIA General Counsel, Inspector General, or Director. The Committee determined that the non-designated files of these investigating bodies sometimes do not contain all the materials that were directly relevant to the subject of the investigation. It is necessary, therefore, to amend the bill in order to ensure full access to the materials in designated operational files that were relevant to the investigation, but were not duplicated in the files of the investigating body.

On this issue the Committee will also state in its report that, in situations where a document was not reviewed in connection with an investigation because it was withheld or overlooked through inadvertence, the document will be considered an improperly placed document and thus accessible under the judicial review procedures. This closes a potential loophole in the language of the amended bill that refers to information "reviewed and relied upon" by investigators.

The third amendment to the bill adds a new subsection requiring the Director to promulgate regulations for designation of operational files and for review of designation at least once every ten years. The regulations must require the appropriate Deputy Director or Office Head to specifically identify categories

of files for designation, explain the basis for their recommendation, and set forth procedures based on the statutory criteria to govern the inclusion of documents in designated files. In addition, the regulations must provide procedures and criteria for review of each designation not less than once every ten years to determine whether the designation may be removed from any file. These criteria must include consideration of the historical value or other public interest in the subject of the file and the potential for declassifying a significant part of its contents.

This amendment is especially significant in light of the issues raised by the President's Executive Order on classification, which eliminated the requirement in President Carter's order that the public interest in disclosure be taken into account in making declassification decisions. Senator Durenberger has introduced legislation, which I have cosponsored, to make the public interest standard part of the provisions on classified information in the Freedom of Information Act. Incorporation of that standard in the criteria for removal of designation from CIA operational files under this bill is an important step in the right direction.

Finally, and perhaps most important, the bill is amended to establish clear procedures for judicial review in cases of alleged improper file designation or alleged improper placement of records solely in designated files. At the first public hearing on the bill, I asked CIA officials whether there would be judicial review of file designations; and they replied that there would be none whatsoever. This answer raised serious problems, because many citizens believe the basic principle of the Freedom of Information Act is that the courts will have an opportunity to review the bureaucratic decisions that keep information secret. I am very pleased, therefore, that agreement has been reached on an amendment to the bill that guarantees an opportunity for persons who have evidence of improper file designation or improper placement of records solely in designated files to have the courts look into the matter and determine whether CIA should conduct the requested search and review for information in designated files.

In addition to the changes in the bill, the Committee has examined carefully the likely practical impact of the bill. At the first hearing I said there were several questions that needed to be checked out. Was it true that the bill would not reduce the actual amount of information that comes out under the Freedom of Information Act today? Would reporters and scholars still have access to as much information as possible consistent with national security about the CIA intelligence product that goes to national policymakers? What would happen to the enormous backlog of CIA requests? How did CIA plan to improve its processing of requests for information that can be declassified?

To answer these questions, the Committee has submitted detailed written questions to the CIA and has obtained firm commitments on crucial points. For example, I asked the CIA to review a list of selected CIA documents which have been released to the public and indicate which of them would or would not remain subject to search and review under the bill. This list covered a wide range of significant documents on CIA policies and controversial operations. In response to this request, the CIA prepared an item-by-item analysis of the impact of the bill, which will be part of the record of the Committee's consideration. The CIA's analysis explains why virtually all of the documents are the type that would continue to be accessible to search and review should they be requested under FOIA after this bill is enacted.

The CIA has also agreed to submit to the Committee a detailed plan for eliminating the present backlog of FOIA requests as part of a specific program of administrative measures the CIA will take to improve processing of FOIA requests after the enactment of the bill. The agency will not reduce its budgetary and personnel allocation for FOIA processing during the period of two years immediately after the bill is passed. And the CIA agrees that resources freed by elimination of the backlog will be reallocated to augment resources for search and review of non-designated files. For its part, the Select Committee will regularly and closely scrutinize CIA's actions to insure that concrete results are achieved and that all FOIA requests to the CIA are responded to in a timely manner and treated with the courtesy required by the spirit, as well as the letter, of the FOIA.

As a result of the changes in the bill and the commitments made to the Committee by the CIA, I am satisfied that S.1324 will serve both the CIA's operational interests and the public's right to have as much information as possible about their government. During the weeks ahead interested citizens will have an opportunity to examine the new bill language, and the Committee's report will help explain the legislative intent. I believe the bill will withstand this scrutiny and be recognized widely as a unique opportunity to resolve the problems associated with the CIA and the Freedom of Information Act.

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STATEMENT OF VIEWS BY SENATOR DANIEL K. INOUYE

ON INTELLIGENCE COMMITTEE ACTION

APPROVING S.1324

ON ACCESS TO INTELLIGENCE INFORMATION

S.1324, as amended by the Intelligence Committee prior to its approval, is designed to provide limited relief to the Central Intelligence Agency from the administrative burdens and security risks associated with processing public requests for documents under the Freedom of Information Act while preserving potential public access to such records as are legitimately subjects of public concern. I made a statement during the public hearings on this bill, accompanied by a written submission, in which I commended the intent of the bill while enumerating several concerns with its specific provisions. These concerns, which became more focused as work proceeded on this bill, were primarily the following: the nature of agency decisions to designate certain files as operational and exempt from search and review in response to requests under the FOIA; judicial review of such actions under the provisions of the bill, specifically the designation and maintenance of files as exempt operational files; continued access to files containing evidence of abuses or improprieties by intelligence personnel acting in their official capacity; the potential for release of historically significant intelligence information, after a reasonable period time;

identification and review of intelligence reports located in operational files; and the circumstances under which covert action could no longer be denied by the U.S. government, such that relevant files would have to be reviewed. I would like to address my understanding of how each of these issues has been resolved as a result of the Committee's action approving this bill.

I. Designation of Operational Files

Two changes have been made to S.1324 as introduced which delineate better the nature and location of files which can be designated as operational and the procedure by which such decisions may be made. First, section 701 of the amendments has been reorganized to make it clear that it is only certain types of files located in specific offices of the CIA which are subject to designation under the Act. These are the files of the Directorate of Science and Technology which document scientific and technical means for collecting intelligence; files of the Directorate of Operations which document intelligence operations or relationships with foreign governments; and files of the Office of Security which document background investigations conducted to determine the suitability of potential human sources.

Second, the new subsection 701(d)(1) has been added which requires the Director of Central Intelligence (DCI) to implement his authority to designate files as operational by promulgating regulations. These regulations must require the officials

responsible in the first instance for designation and maintenance of operational files to: specifically identify the categories of files in their offices which are recommended for designation; explain the basis of these recommendations; and set forth procedures consistent with the statutory criteria of subsection 701(a), cited above, to govern the inclusion of specific documents in files recommended for designation. The DCI must approve these submissions in writing.

These provisions are a significant improvement to the terms of this subsection, relating to the designation of operational files. Not only is the scope of the particular files that may be designated more clearly delineated, but specific actions must be taken concerning the organization and maintenance of designated files; these actions, accompanied by written determinations, will greatly focus the designation process and provide an administrative record to facilitate judicial review. The Chairman is to be commended in securing the acceptance of the CIA to these changes, suggested by the civil liberties community and recommended by several members of the Intelligence Committee.

II. Judicial Review

New subsection 701(e)(1) provides a specialized process of judicial review for public claims that agency search and review of records in response to requests for information under the FOIA was unduly limited by improper designation of files as operational or improper placing of non-operational documents in operational

files. Judicial review of the designation and maintenance of operational files, exempt from search and review under the FOIA, is independent of the standards for judicial review developed to govern the interpretation of other actions related to the FOIA. This process is intended to minimize the necessity for the CIA to provide specific details on the contents of its filing systems to requestors or to judges reviewing the adequacy of the Agency's search and review of files in response to FOIA requests. For the most part, judicial decisions under this subsection will be made solely on the basis of sworn affidavits submitted by the parties to the litigation. Ordinarily, the court's review would be limited to assessing, on the basis of the agency's affidavits, that its regulations under subsection 701(d)(1) satisfy the statutory criteria for designation established in subsection 701(a). However, when the requestor establishes on the basis of the affidavits grounds to believe that a specific file containing relevant documents was improperly designated or relevant documents were improperly placed in a designated file, then the court may proceed to review these questions as well.

III. Intelligence Abuses or Improprieties

There has been concern that the provisions of this bill might exempt from search and review in response to requests under the FOIA documents relating to abuses or improprieties committed by the intelligence personnel acting in their official

capacity. An additional proviso has been added at the end of subsection 701(a) to provide that information reviewed or relied upon in official investigations on such events will be searched in response to requests under FOIA, regardless of whether the particular documents in question are located only in operational files. For the most part, records relevant to abuses or improprieties that have been seriously alleged will have been examined by official investigatory bodies, both internal to the Agency and independent. When, however, such records have been withheld from official investigation, or overlooked through inadvertance by investigators, they would be considered improperly filed if they were found to be located only in designated operational files. As such, failure to search for them and review them for potential release in response to a FOIA request would be subject to judicial review under subsection 701(e)(1).

IV. Historically Significant Intelligence Information

If operational files could be designated as exempt from search and review under the FOIA for an unlimited period of time, there would be a danger that historically significant intelligence information would never become available to historical researchers and that the writing of history would be distorted as a result. Although actual operations are usually the most sensitive aspect of intelligence and may remain sensitive for a long period of time, nevertheless these operations

themselves are an important part of the chronicle of our times. Intelligence operations have been an important part of the relationship between the superpowers in the postwar world, and are therefore important to understanding contemporary as well as past international relations. Details released concerning certain intelligence collection operations -- such as the U-2 affair and the Berlin Tunnel operation -- have already made a great contribution to our historical understanding of the development of U.S.-Soviet relations.

Changes have been made in S.1324 which I hope will greatly expand the assess of historical researchers to historically significant information on intelligence operations. Under subsection 701(d)(2) of the amendments, the DCI must formulate regulations providing procedures and criteria for the review of exempt operational file designations every ten years. The criteria issued by the DCI must include consideration of the historical value or other public interest in the subject matter of the particular files. Not only must the DCI consider these interests, but he must also include in his consideration the potential for actually declassifying and releasing a significant part of the information contained in operational files.

The DCI should be able to provide details concerning his decisions to retain or terminate the designation of particular files as operational. This can best be done through the establishment of a definite unit to conduct these reviews, and I am informed

that the DCI has agreed separately to establish such an office. I hope that the establishment of this office and these regulations will greatly facilitate the review of operational information for release to historical researchers.

V. Intelligence Reports Located in Operational Files

Sometimes, because of the extreme sensitivity of certain intelligence reports that inherently refer to or reveal critical sources or methods of intelligence gathering, raw or finished intelligence products continue to be stored only in operational files of the Operations or Science and Technology Directorate or Security Office after being circulated to policymakers. The Committee has been assured that whenever such documents are circulated as intelligence products outside their operational components a record is made of them in the receiving unit prior to their being returned to operational files. We have also been informed that, in the case of both raw and finished intelligence products, adequate information concerning such documents would exist in non-designated files to permit them to be identified as a result of a record search in response to a FOIA request. After being located through this search, such documents must actually be reviewed for release pursuant to the FOIA, regardless of their location only in designated operational files.

VI. The Existence of Covert Actions

Part of the final proviso in subsection 701(a) provides that designation of certain files as operational shall not shield them from search and review in response to requests under FOIA if the request concerns "any special activity the existence of which is not exempt from disclosure under the provisions of the [FOIA]". There have been questions concerning the circumstances in which the existence of a covert action could no longer be considered classified and hence not subject to release under the FOIA. Admission of the existence of such an action by the President or an authorized Executive Branch official would of course be sufficient to prevent its complete denial. The Senate has also exercised its power to declassify national security information, including such actions, under Sen. Res. No. 400 (1976), which established the Select Committee on Intelligence and provided definite procedures for the treatment of classified information by members and their staffs. Furthermore, since covert actions are usually considered to be those affirmative measures by the United States government taken with respect to foreign powers the existence of which can plausibly be denied by the United States government, there would undoubtedly be instances in which the existence of the operation became so well known that the Administration could no longer completely deny it. In such cases, the FOIA would certainly demand search and review of relevant files for release of information concerning the activity. In the context of an appeal under the FOIA, the courts can be expected to address this question as a factual one in the absence of an explicit admission by an authorized official of the Executive Branch.

269(dc)

STATEMENT OF SENATOR DAVE DURENBERGER

ON S.1324, THE INTELLIGENCE INFORMATION ACT OF 1983

OCTOBER 4, 1983

I am happy to join my Intelligence Committee colleagues today in supporting S.1324, the Intelligence Information Act of 1983. This bill is the product of truly impressive cooperation between the Central Intelligence Agency and both this Committee and outside groups concerned with the flow of information to the public. Thanks to that cooperation, we are able to report out a bill that will both improve the security of sensitive CIA files and relieve the CIA of a needless administrative burden, while still maintaining Freedom of Information access to virtually all the material that is currently released under FOIA.

I am especially pleased, of course, by what we have been able to do to help historians gain access to CIA materials that can safely be released. Yesterday and today, CIA Director Bill Casey and I exchanged letters on the subject of a voluntary CIA program of reviewing non-designated and de-designated files for declassification. The Director, who is an historian himself, enthusiastically agreed to establish such a program, and I agreed to push for Committee approval of the funds for this important undertaking. Both Bill Casey and I are confident that the CIA, by concentrating its effort on those files that are of historical value or other public interest and that have significant releasable information, will be able to increase substantially the flow of historical material to the public.

The Intelligence Committee has also taken several actions regarding the bill itself that will safeguard the interests of historians and of the public at large. Our amendment on standards for designation of operational files is a good example. This amendment makes clear that, in the Office of Security and the Directorate of Science and Technology, only particular files will be eligible for designation as operational.

The amendment on designation standards and our report on this bill also make clear what sort of files will not be considered operational. For example, not only finished intelligence products, but also raw intelligence cables and memoranda that the Directorate of Operations sends to CIA's analysts will not be given operational status. Policy memoranda sent outside the Operations Directorate will not be designated. Neither will the files of the Director and Deputy Director, the Comptroller, the Finance Office, the General Counsel, and the other agency-wide management offices that make CIA policy. So the major decisions on CIA operations, as well as the budgetary story of those operations, will remain open to FOIA search and review.

The Intelligence Committee has gone to some length to make sure that there will be no loopholes through which intelligence or policy memoranda might slip into designated status. We have reviewed the CIA's filing systems and secured CIA statements for the record to pin down the fact that even if a memo that had been disseminated to the Intelligence Directorate or shown to the CIA Director was then

returned to the Operations Directorate for safekeeping, it will still be considered non-designated and will in practice be accessible for FOIA search and review. We also have made clear that documents sent outside the CIA, like memoranda to the National Security Council, cannot be designated under this bill. And in case there should be an instance of improper designation of a file, or somebody should attempt to keep non-designated material out of FOIA by storing it solely in designated files, the Intelligence Committee has adopted an amendment to make clear that there will be judicial review and court-ordered remedies available whenever a complainant can produce admissible evidence of such improper filing.

One difficult issue that the Intelligence Committee faced was how to treat the files on activities that have been investigated for possible illegal or improper behavior. The amendment and report language adopted by the Committee make clear that FOIA search and review can extend beyond the files of the investigating unit (such as the General Counsel's office) to include materials that were "reviewed and relied upon" by that unit and also files that were withheld or overlooked, but that still contain information directly relevant to the impropriety or illegality. We think of this as being a victory for journalists and political authors, but it is also a victory for historians. For the history of U.S. intelligence must inevitably include the blunders and illegalities along with the successes, and also the nature and impact of the investigations. By keeping these files open to FOIA search and review, we are helping to make sure that historical perspective will not be distorted by keeping embarrassments out of the public eye.

Historians made a strong case for a time limit on the designation of operational files. They correctly argued that such files lose their sensitivity over time and that historians need eventually to have access to the full range of information. I think all of us are sympathetic to that argument; we, too, spend much of our time trying to get the full story on things. But the CIA also had a case when they said that some files might remain sensitive for a much longer time than one would predict. Some agents live to be very old; their enemies sometimes live equally long, or keep files on the past, or exact revenge from later generations. Most governments would let bygones of a generation ago be bygones, but maybe not all would. So the committee looked for something other than a rigid time limit.

The amendment adopted by the Committee is a compromise. It requires the CIA to review its designation of files at least once each ten years. It also specifies the basic criteria for removal of designation: "the historical value or other public interest in the subject matter;" and "the potential for declassifying a significant part of the information." Our report language emphasizes that the CIA should consult with historians, and listen to them, regarding the historical value of particular topics. The amendment also indicates that portions of files--such as the story of a given operation, even though it may be part of a larger file on operations over the years--should be removed from designation if they meet the criteria for removal. The CIA will make these decisions, and I know that there

will be concern over their willingness to consider the public interest in opening files to FOIA search and review. But they are willing to agree to our bill and report language, and their willingness to institute a voluntary program of declassification review gives me increased confidence that the CIA will also review its operational files conscientiously.

The CIA has also agreed to certain commitments regarding the way it handles Freedom of Information requests. They agree not to reduce their FOIA manpower in the next two years, but instead to devote that manpower to reducing their backlog of requests. They agree that if the burden is eased on the Operations Directorate but remains high for the Intelligence Directorate, they will adjust their manpower to tackle the problem. They will also continue to give speedy service to those whose FOIA requests do not require extensive search and coordination. For many FOIA requesters, including historians interested in substantive intelligence products, this should mean faster and more courteous service.

For the historian, then, I think that this bill is a good bargain. The Intelligence Committee has done a great deal to limit the extent to which information may be exempted from FOIA that might otherwise have been released to the public. We have ensured judicial review to guard against improper use of this exemption. We have obtained concrete pledges of better FOIA service by the CIA. And we have gotten the CIA to commit itself both to periodic reviews of its file exemptions and to a voluntary program of declassification for significant files that can be relased to the public.

Why do I emphasize historians so much? I do love history, but I also deeply believe that historical research and writing influences and benefits us all. History is one of our few short-cuts to wisdom. As Cicero said, "Not to know the events which happened before one was born, that is to remain always a boy." And history is the basis of myth in modern life. Nearly three hundred years ago Andrew Fletcher said, "If a man were permitted to make all the ballads, he need not care who should make the laws of a nation." We have gone from ballads to headlines and histories, but the interpreters of our past still affect vitally the way we will react to events of the present and future.

So when we protect the historian's access to the full story, we are really protecting our nation's understanding of itself. And we are ensuring that we and the generations to follow will better understand how to deal with the challenge of government.

.269(b)

STATEMENT OF SENATOR BARRY GOLDWATER
CHAIRMAN, SENATE SELECT COMMITTEE ON INTELLIGENCE
ON
S. 1324 - INTELLIGENCE INFORMATION ACT OF 1983

THE MEETING WILL COME TO ORDER.

WE ARE HERE TODAY TO MARK-UP S. 1324, A BILL AMENDING THE NATIONAL SECURITY ACT OF 1947. THIS LEGISLATION WOULD RELIEVE THE CIA FROM SEARCHING AND REVIEWING CERTAIN OPERATIONAL FILES UNDER THE FREEDOM OF INFORMATION ACT. THIS RELIEF WILL ENABLE THE AGENCY TO BECOME MORE EFFICIENT SO THAT OTHER FOIA REQUESTS MAY BE ANSWERED SPEEDILY.

S. 1324 WAS INTRODUCED BY ME ON MAY 18TH OF THIS YEAR. SENATOR THURMOND, JUDICIARY COMMITTEE CHAIRMAN, CO-SPONSORED. SINCE THAT TIME, VARIOUS SENATORS AND INTEREST GROUPS HAVE EXPRESSED THEIR VIEWS ON THE BILL. ON JUNE 21 AND JUNE 28 WE HELD OPEN HEARINGS ON THIS LEGISLATION. THE CENTRAL INTELLIGENCE AGENCY, AMERICAN BAR ASSOCIATION, AMERICAN CIVIL LIBERTIES UNION, ASSOCIATION OF FORMER INTELLIGENCE OFFICERS, NEWSPAPER PUBLISHERS, HISTORIANS, AND JOURNALISTS WERE ALL HERE TO PROVIDE COMMENT. AND WE LISTENED. AND THEN WE WENT BACK AND DISCUSSED SOME MORE HOW WE COULD ADDRESS ALL THESE INTERESTS. WE DID A DARN GOOD JOB IF I DO SAY SO MYSELF.

I PARTICULARLY WANT TO THANK SENATORS DURENBERGER, LEAHY AND HUDDLESTON FOR PARTICIPATING IN THESE DISCUSSIONS, WHICH, WERE VERY SUCCESSFUL BECAUSE EVERYONE WENT AWAY WITH MOST OF WHAT THEY NEEDED. REACHING AGREEMENT ON THIS BILL IS A GOOD EXAMPLE OF HOW OUR DEMOCRATIC PROCESS SHOULD WORK. EVERYONE GAVE A LITTLE AND IN THE LONG RUN GOT A LOT MORE IN RETURN.

THE CIA IS GETTING RELIEF FROM THE ALMOST IMPOSSIBLE BURDEN THE FOIA HAS PLACED ON IT, BURDENS WHICH I DO NOT THINK CONGRESS REALLY CONTEMPLATED WHEN IT PASSED THE 1974 AMENDMENTS.

PRESENTLY, FOIA MANDATES THAT IF SOMEONE REQUESTS ALL THE INFORMATION ON A CERTAIN SUBJECT, ALL THE FILES HAVE TO BE LOCATED. IN AN INTELLIGENCE AGENCY, MOST OF THE INFORMATION IS CLASSIFIED. BUT THAT DOES NOT END THE AGENCY'S JOB. AN EXPERIENCED PERSON MUST GO THROUGH STACKS AND STACKS OF THESE PAPERS -- SOMETIMES THEY ARE MANY FEET TALL -- TO JUSTIFY WHY ALMOST EVERY SINGLE SENTENCE SHOULD NOT BE RELEASED. IF THIS IS NOT DONE WELL, A COURT COULD ORDER THE INFORMATION RELEASED.

HOWEVER, VERY LITTLE INFORMATION, IF ANY, IS EVER RELEASED FROM OPERATIONAL FILES WHEN THE REQUESTOR SEEKS INFORMATION CONCERNING THE SOURCES AND METHODS USED TO COLLECT INTELLIGENCE. EVEN THEN, THE INFORMATION RELEASED IS USUALLY FRAGMENTED.

ALSO, THERE IS ALWAYS THE RISK THAT THERE WILL BE A MISTAKEN DISCLOSURE OR THAT SOME COURT MAY ORDER THE RELEASE OF INFORMATION WHICH COULD REVEAL A SOURCE'S IDENTITY OR A LIAISON RELATIONSHIP. THAT IS WHY ONLY THESE MOST SENSITIVE OPERATIONAL FILES WOULD BE EXEMPT FROM SEARCH AND REVIEW UNDER THE PROVISIONS OF MY BILL.

THE FOIA REQUESTORS WILL GET SOMETHING IN RETURN. THEY ARE GOING TO GET BETTER SERVICE. I HAVE TALKED WITH THE CIA AND THEY HAVE AGREED NOT TO REDUCE THE BUDGETARY AND PERSONNEL ALLOCATION FOR FOIA PROCESSING FOR TWO YEARS IMMEDIATELY FOLLOWING PASSAGE OF THIS BILL. THIS MEANS THAT, TO THE EXTENT THAT RESOURCES ARE FREED UP AS A RESULT OF S. 1324, THE AGENCY WILL UTILIZE THOSE RESOURCES FOR FOIA PROCESSING.

DOES ANYONE ELSE HAVE SOMETHING TO SAY BEFORE WE MARK-UP?